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FISCAL IMPACT STATEMENT

LS 6247

BILL NUMBER: SB 92

NOTE PREPARED: Jan 30, 2012

BILL AMENDED: Jan 26, 2012

SUBJECT: Public Access Issues.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Public Access and Open Door Laws*: This bill provides that a court may impose a civil penalty against: (1) an officer of a public agency or an individual employed in a management-level position with a public agency; or (2) the public agency; for violating the Open Door Law with specific intent to violate the law if the plaintiff obtained an advisory opinion from the Public Access Counselor before filing an action.

The bill provides that a court may impose a civil penalty against an officer, management-level employee, or the public agency for violating the Public Records Law if the officer, management-level employee, or agency: (1) continues to deny a request for a public record after the Public Access Counselor has issued an advisory opinion that instructs the agency to allow access to the public record; and (2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure. It provides that an individual or agency could be subject to a civil penalty if the individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order. It provides that a court may not impose a civil penalty unless the Public Access Counselor has issued an advisory opinion that instructs the public agency to allow access to the public record before the lawsuit is filed. The bill also provides that it is a defense to the imposition of a civil penalty under this section for a violation of the Open Door Law or Public Records Law if the individual acted in reliance on an opinion of the public agency's legal counsel or an opinion of the Attorney General.

The bill requires a public agency to provide copies of records within a reasonable time in consideration of the public agency's workload and difficulty in fulfilling the request. It provides that "education records" of a student at a state educational institution as defined by the Family Educational Rights and Privacy Act, 20 U.S.C.

1232g, may not be disclosed by the institution except to the student who is the subject of the records. It provides that a public agency may withhold personal information from public disclosure regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. The bill also provides that a public agency has discretion as to whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.

Request for Notices: The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). It provides that a court may not declare a governmental action void for failure to give notice by electronic mail or posting on the local government agency's web site, if the agency made a good faith effort to comply with the statute.

Review of Public Records In Camera: The bill requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the Public Records Act.

Education Fund for Public Access Counselor Program: The bill creates an education fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the Public Access Laws.

Effective Date: July 1, 2012.

Explanation of State Expenditures: (Revised) *Public Records and Open Door Laws:* This bill could increase expenditures of any public agency if any officer or management-level employee of that agency that intentionally violates the law by:

- (1) Failing to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Taking final action outside a regular meeting or special meeting.
- (3) Participating in a secret ballot during a meeting.
- (4) Discussing in an executive session subjects not eligible for discussion in an executive session.
- (5) Failing to prepare a memorandum of a meeting required by IC 5-14-1.5-4.
- (6) Participating in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.
- (7) Denying a person's request for inspection or copying of a public record if the public record is subject to disclosure.
- (8) Charging a copying fee that exceeds the amount permitted.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above if the plaintiff obtained an advisory opinion from the Public Access Counselor. Civil penalties imposed against a public agency will be paid from the agency's budget. The penalties will be deposited in the Education Fund established by this bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

Background Information - Under IC 5-14-1.5-2 "public agency" means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.
- (7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

Explanation of State Revenues: *Education Fund for Public Access Counselor Program:* Revenues from a public agency and/or individual violating the provisions of this bill will be distributed into the Education Fund established by this bill. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the Treasurer of State and used to pay the expenses of administering the fund and nonrecurring administrative expenses.

Explanation of Local Expenditures: *Public Records and Open Door Laws:* Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

Request for Notices: The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail (if the agency has the capacity to send electronic mail); or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Any increase in expenditures should be minimal.

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

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